

AGENDA

PARTNERSHIPS AND LIMITED LIABILITY COMPANIES COMMITTEE

Thursday, April 14, 2005
10:30 a.m. - 12:00 p.m.

Via Teleconference
Call In Number 1-800-304-8043
Passcode: 471976

Directions: Dial the 800 number, enter the passcode
and you will be connected accordingly

I. Administrative Matters

- | | | |
|----|-----------------------------------|-----------------------|
| A. | Opening Remarks and Announcements | Johal |
| 1. | Appoint Secretary | Johal |
| 2. | Minutes from last meeting | Johal |
| B. | Committee Webmaster | Brad Rogerson |
| C. | Executive Committee Liaison | Neil Wertlieb |
| D. | Liaison to Publications Committee | Ed Gartenberg |
| E. | Corporations Committee | Bruce Deming |
| F. | Cyberspace Committee | Denise Ulrich |
| G. | State Bar Leadership Retreat | Johal & Brad Rogerson |

II. Proposed Legislation

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|----|--|-------------|
| A. | Revised Limited Partnership Act (2001), Affirmative Legislative Proposal | Larry Doyle |
| B. | AB No. 180 (LLPs: engineers and land surveyors) | Johal |
| C. | SB No. 17 (Property Tax: change in ownership) | Johal |
| D. | AB 1859 (Short-form cancellation process for LLCs) | Jim Andrews |
| E. | SB 1746 (Unincorporated associations) | Jim Andrews |

- F. AB 241 (Mergers: certificates of satisfaction) Johal
- G. AB 242 (Underwritten title and limited liability companies) Johal
- H. SB 610 (Property Tax: Welfare Exemption) Johal
- I. AB 279 (LLC Securities) Johal
- J. SB 1022 (Professional LLC) Johal

III. Recent Developments

- A. Practice Issues Johal

Jack S. Johal

From: Jelsma, Phil [PJelsma@LUCE.com]
Sent: Monday, April 04, 2005 5:38 PM
To: Jelsma, Phil; 'DAM@hogefenton.com'; 'Larry.Doyle@calbar.ca.gov'
Cc: Jack S. Johal
Subject: Re: LLC's

AB 339 cleared Banking and Finance 9-0 this afternoon so we are off to Judiciary. Also Senator Campbell seems willing to amend SB1202 to permit professional LLCs. We're on our way.

-----Original Message-----

From: Jelsma, Phil <PJelsma@LUCE.com>
To: 'Marion, David A.' <DAM@hogefenton.com>; 'Larry Doyle' <Larry.Doyle@calbar.ca.gov>
CC: Jack Johal <jjohal@hansonbridgett.com>
Sent: Mon Mar 28 17:03:49 2005
Subject: RE: LLC's

I think we had it right in the first draft of SB 469 that you have a separate chapter (Chapter 9) on professional LLCs. I've dusted off our first draft and pulled this section out and will circulate it tomorrow for comments.

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-----Original Message-----

From: Marion, David A. [mailto:DAM@hogefenton.com]
Sent: Monday, March 28, 2005 2:46 PM
To: 'Larry Doyle'
Cc: Phil Jelsma; Jack Johal
Subject: RE: LLC's

Larry, I have two principal concerns with the proposed language set out under "My thought":

1. It's confusing, particularly when you try to read it against Corporations Code Section 13402. I don't think it provides any more guidance than did the recent AG opinion.
2. I think that the disability of an LLC to render professional services for which a license, etc. is required should not be inherent in the nature of the entity, but should result from a specific determination of the legislature or of the agency charged with issuing licenses, etc. for particular services whether those services should be performed by an LLC.

My suggestion for an amended Section 17375 is as follows:

"Except to the extent permitted by such statutes or by rules or regulations promulgated thereunder, and subject to such conditions as may be specified in such statutes, rules or regulations, a limited liability company is not permitted to render services which can be rendered only pursuant to a license, certification or registration authorized by the Business and Professions Code, the Chiropractic Act, the Osteopathic Act or the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code)."

or, alternatively:

"A limited liability company is permitted to render services which can be rendered only pursuant to a license, certification or registration authorized by the Business and Professions Code, the Chiropractic Act, the Osteopathic Act or the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code) only to the extent permitted by such statutes or by rules or regulations promulgated thereunder, and subject to such conditions as may be specified in such statutes, rules or regulations."

While the drafting could also go the other way - i.e., an LLC can perform such services unless specifically prohibited - I think the negative presumption would be more palatable.

-----Original Message-----

From: Larry Doyle [mailto:Larry.Doyle@calbar.ca.gov]
Sent: Wednesday, March 23, 2005 2:36 PM
To: Phil Jelsma; Jack Johal; Dave Marion
Subject: Fwd: LLC's

Phil, Jack, Dave --

Senator John Campbell has introduced SB 1022 (http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1022&sess=CUR&house=B&author=campbell) for the purpose expressed below in Andrew Kiefer's email to me. Sen. Campbell would very much appreciate your help in crafting amendment language to achieve that goal, if possible.

I know we had some email dialogue on the issue earlier, but I'm not sure Phil was included and Sen. Campbell's staff specifically asked for his input (your reputation has preceded you, Phil!).

Thanks.

Larry

Date: Tue, 22 Mar 2005 18:34:44 -0800
From: "Kiefer, Andrew" <Andrew.Kiefer@SEN.CA.GOV>
Subject: LLC's
To: 'Larry Doyle' <Larry.Doyle@calbar.ca.gov>
Cc: "Kiefer, Andrew" <Andrew.Kiefer@SEN.CA.GOV>

Larry,

Thanks in advance for any assistance that you and the Bar might be able to provide. As you know, Senator Campbell has introduced SB 1022 which is intended to clarify who qualifies as an LLC.

Background:

In 1994, California passed the Beverly-Killea Limited Liability Company. For the same reasons that professionals weren't previously allowed to incorporate, professionals similarly were not allowed to form LLCs. Corp. Code §17375 provides that, "Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of §13401." This sends us on to read Corp. Code §13401, which says: "'Professional services' means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act."

With a definition that defines professional services as "professional services," the SOS decided to refuse to accept LLC applications from all businesses licensed under the B&PC. For 10 years this was the status quo. Recently, the SOS asked the AG for an opinion, which in the estimation of many, added uncertainty as to who qualify as to form and LLC.

The recent AG opinion in short said that some activities licensed by the B&P code were professional, requiring extensive educational and training requirements and the passage of a rigorous state-administered exam, while others simply require good character, responsibility, etc. The later, according to the opinion, should be allowed to form as LLC's.

The AG opinion did not state which licensees could form as LLC's and the SOS has refused to make the decision either.

Problem:

Based upon the AG's opinion, it appears as though certain B&P code licensed activities can form LLC's, but there is no authority beyond the AG opinion, that confirms the legal ability of a licensee to form as an LLC. Furthermore, there is no state agency/department/bureau which is either statutorily required or in the SOS's case, willing to make the determination. Given this, there is a very real potential that licensees could form as an LLC under the auspice of the AG opinion and not have the liability protections of an LLC.

Solutions :

1. Repeal Corp. Code Sec. 17375 (My reading is that this would allow any profession to form as an LLC)
2. Amend Sec. 17375 to allow all professions, excluding those professions explicitly allowed by the Corp Code to form as LLP's, to form as LLC's. (This I believe is consistent with the intent of the AG opinion to 'harmonize the provision of the LLC act the PC Act.)

My thought:

In the interest of making the LLC as clear as possible, I think it would be advisable to explicitly state in Corp. Code Sec. 17375 that all professions, except those professions which can form as LLP's, can form as an LLC. Rick Burt had the following suggestion in an earlier email exchange:

"17375. A limited liability company is not permitted to render professional services that could lawfully be rendered by a corporation only if such corporation were a professional corporation organized under the Moscone-Knox Professional Corporation Act, but the foregoing does not prohibit a limited liability company from rendering professional services if a corporation organized under the General Corporation Law could lawfully render those services. A limited liability company is not permitted to render services for which a license, certificate, or registration is required under the Chiropractic Act or the Osteopathic Act or under the Yacht and Ship Brokers Act (Article 2 (commencing with

Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code)."

Sorry for the length of the email, but any assistance you or your folks could provide would be extremely appreciated.

Andrew Kiefer

Legislative Director

Office of Senator Campbell

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